BOOK REVIEW


The divisions in the Fourth Volume of the Restatement of Torts are held together by no stronger thread than convenience in compilation. This volume picks up where the third volume left off in its treatment of interference with business relations through various trade practices. In a continuation of Part I of such division it carries the reasoning by disclosing the law surrounding the possession of a trade secret and by going into the rules growing out of misrepresentations in marketing goods and into false advertising. In Part II the interference with business is approached from the factual background of a refusal to deal with a particular party, or the causing of others to refuse to deal, or to break their contracts with such party. Involved in this subdivision is a discussion of tort law as it applies in the field of the labor dispute. At the conclusion of this treatment the fourth volume breaks new ground and in succession focuses attention upon rules growing out of the invasions of interest in land other than by trespass, upon rules emerging from a group of miscellaneous situations (covered in this area are such topics as liability for intended consequences and contributing tort-feasors), upon defenses applicable to all tort claims, and upon remedies, including damages and injunctions.

It is a bit staggering to read through a volume of the Restatement with an eye toward reviewing it. The writer has done just that. The effort has been made to not pass over a word, nor a definition, nor a distinction. The result was a mind weary with words, definitions, and distinctions. If the writer had not become intimately acquainted with the other volumes of the Restatement of Torts he might be led to make the assertion that this volume suffers because of an indirect, involved, and complicated way of stating rules. But it is just the knowledge of the usefulness of the previous volumes that deters him from making such a statement. An opinion about the Restatement should not be the result of one reading. The present phenomenally meticulous Restatement is a veritable thesaurus of problems and philosophy. Its full worth can be appreciated only after it has been used as a research instrument in connection with the solving of some particular practical and instructional problem. It contains too much meat to digest in only one reading. When, however, it is used as a tool to throw light upon some specific phase of the law it seems certain that volume four must command the same respect and admiration as the writer feels the previous volumes have commanded. The reader can grasp the full import of the definitions, distinctions, and comments only when he is running down an isolated problem. It is then that he is impressed by the tremendous learning, powerful analysis, and unbelievable patience with detail. For example, the writer was recently interested in a question as to whether A could recover from a druggist who, disregarding a request by A, persisted in illegally furnishing dope to A's brother and thereby causing A certain financial expenses incident to supporting and attempting to cure the dope fiend. In endeavoring to find the answer, cognizance was taken of section 870, comment e. It was inevitable that in mulling over the problem the pronouncements of the section should stand forth in understandable clarity.

Of course, this Restatement—like the one that went before it—will not solve with finality every problem. It has been common experience for the courts
to note in a plaintiff's brief the citation to one section and in defendant's brief a citation to another section of the Restatement. Each reference is supposed to state the law upon the same problem. Such observable facts do not mean that we should condemn the Restatement. As long as lawyers deal with words such results are inevitable—Professor Fred Rodell and his Woe Unto Lawyers notwithstanding.

There is one criticism which it seems can be validly made of part of volume four. One can wonder if it is feasible or practical to restate the law in the field of business relations and labor. Even the Restatement reporters admit that much in the field is controlled by statute. Probably more of the area will be so controlled in the future. But apart from that it seems that the American Law Institute has been overly ambitious when it overlooks the fact that the growing complication of economic conditions of modern life has made for an unsettled state of "business" and "labor" law. Is there any body of convictions about these branches if the law which the compilers of the Restatement should set down? Is it not possible that the uncertainties of the future should not be put in fetters to the certainties of the past and the present? Perhaps it is too soon to restate the law in such fields. Perchance in this area the law has not reached its proper social maturity. A clue can be secured from the attitude of Professor Handler as manifested in his rather recent case book on Trade Regulation. Handler's whole approach discloses that he is keenly aware of the fact that he is working in an area where the expressions of doctrines are still emergent. He keeps his eyes constantly on things as they are likely to be. He is sure there will be change and that there ought to be change. Such an outlook seems realistic in the field under discussion.

In a few other sections of the volume the same fault—restating the law before it has reached a proper social maturity—can be noted. For example, such seems to be observable in section 867 where the topic of interference with privacy is set forth, and in section 869 where harm to an unborn child is discussed.

There are many sections of the Work which logically resolve questions as to which conflict exists. Illustrative on this point is the most reasonable rule of Section 879 pertaining to liability for concurring or consecutive independent acts. The rule of the section obliterates much of the language found in such a disturbing case as Frye v. Detroit. 1

In this particular Volume there are fewer examples and somewhat more lengthy explanatory comment than are to be found in some of the other Restatement volumes. This is expectable when the reporters are discussing topics which involve as much philosophy and balancing of principles as can be found inherent in the areas of nuisances and injunctions.

Taken as a whole there is certainly enough logical law set forth in this volume to make it necessary for every lawyer, professor, and student to become acquainted with it. Let it help you solve specific problems and you will appreciate its true worth.

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1 256 Mich. 466, 239 N.W. 886 (1932).